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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-sixth session
6-24 March 2000

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the Elimination of Racial Discrimination

Australia

1. The Committee considered the tenth, eleventh and twelfth periodic reports of Australia, submitted as one document (CERD/C/335/Add.2), at its 1393rd, 1394th and 1395th meetings (CERD/C/SR.1393, 1394 and 1395), held on 21 and 22 March 2000. At its 1398th meeting, held on 24 March 2000, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the reports submitted by the State party and the additional oral and written information provided by the delegation, while regretting the late submission of the tenth and eleventh periodic reports. Appreciation is expressed for the comprehensiveness of the report and of the oral presentation. The Committee was encouraged by the attendance of a high-ranking delegation and expresses its appreciation for the constructive responses of its members to the questions asked.

3. The Committee acknowledges that the State party has addressed some of the concerns and recommendations of the Committee's concluding observations on the ninth periodic report (A/49/18, paras. 535-551).

B. Positive aspects

4. The Committee is encouraged by the attention given by the State party to its obligations under the Convention and to the work of the Committee.

5. The Committee notes with appreciation the many measures adopted by the State party during the period under review (1992-1998) in the area of racial discrimination, including those adopted to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Committee welcomes the numerous legislative measures, institutional arrangements, programmes and policies that focus on racial discrimination, as comprehensively detailed in the tenth, eleventh and twelfth reports, including the launching of a "New Agenda for Multicultural Australia" and the implementation of the "Living in Harmony" initiative.

C. Concerns and recommendations

6. The Committee is concerned over the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories.

7. The Committee reiterates its recommendation that the Commonwealth Government should undertake appropriate measures to ensure the consistent application of the provisions of the Convention, in accordance with article 27 of the Vienna Convention on the Law of Treaties, at all levels of government, including states and territories, and if necessary by calling on its power to override territory laws and using its external affairs power with regard to state laws.

8. The Committee notes that, after its renewed examination in August 1999 of the provisions of the Native Title Act as amended in 1998, the devolution of power to legislate on the "future acts" regime has resulted in the drafting of state and territory legislation to establish detailed "future acts" regimes which contain provisions further reducing the protection of the rights of native title claimants that is available under Commonwealth legislation. Noting that the Commonwealth Senate on 31 August 1999 rejected one such regime, the Committee recommends that similarly close scrutiny continue to be given to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples will not be reduced further.

9. Concern is expressed at the unsatisfactory response to decisions 2 (54) (March 1999) and 2 (55) (August 1999) of the Committee and at the continuing risk of further impairment of the rights of Australia's indigenous communities. The Committee reaffirms all aspects of its decisions 2 (54) and 2 (55) and reiterates its recommendation that the State party should ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5 (c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of securing the "informed consent" of indigenous peoples. The Committee recommends to the State party to provide full information on this issue in the next periodic report.

10. The Committee notes that the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is conducting an inquiry into "Consistency of

the Native Title Amendment Act 1998 with Australia's international obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD)". It is hoped that the results will assist the State party to re-evaluate its response to decisions 2 (54) and 2 (55). The Committee requests the State party, in accordance with the provisions of article 9, paragraph 1, of the Convention, to transmit the report of the Joint Parliamentary Committee's inquiry to the Committee when it is tabled.

11. The establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) and of the Aboriginal and Torres Strait Islander Social Justice Commissioner within the Human Rights and Equal Opportunity Commission (HREOC) were welcomed by the Committee. Concern is expressed that changes introduced and under discussion regarding the functioning of both institutions may have an adverse effect on the carrying out of their functions. The Committee recommends that the State party give careful consideration to the proposed institutional changes, so that these institutions preserve their capacity to address the full range of issues regarding the indigenous community.

12. While acknowledging the significant efforts that have taken place to achieve reconciliation, concern is expressed about the apparent loss of confidence by the indigenous community in the process of reconciliation. The Committee recommends that the State party take appropriate measures to ensure that the reconciliation process is conducted on the basis of robust engagement and effective leadership, so as to lead to meaningful reconciliation, genuinely embraced by both the indigenous population and the population at large.

13. The Committee notes the conclusions of the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families" and acknowledges the measures taken to facilitate family reunion and to improve counselling and family support services for the victims. Concern is expressed that the Commonwealth Government does not support a formal national apology and that it considers inappropriate the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to "assist the people whom they affected". The Committee recommends that the State party consider the need to address appropriately the extraordinary harm inflicted by these racially discriminatory practices.

14. The Committee acknowledges the adoption of the Racial Hatred Act 1995 which has introduced a civil law prohibition of offensive, insulting, humiliating or intimidating behaviour based on race. The Committee recommends that the State party continue making efforts to adopt appropriate legislation with a view to giving full effect to the provisions of, and withdrawing its reservation to, article 4 (a) of the Convention.

15. The Committee notes with grave concern that the rate of incarceration of indigenous people is disproportionately high compared with the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process. The Committee recommends that the State party increase its efforts to seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.

16. The Committee expresses its concern about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends to the State party to review all laws and practices in this field.

17. Taking note of some recent statements from the State party in relation to asylum-seekers, the Committee recommends that the State party implement faithfully the provisions of the 1951 Convention relating to the Status of Refugees, as well as the 1967 Protocol thereto, with a view to continuing its cooperation with the United Nations High Commissioner for Refugees and in accordance with the guidelines in UNHCR's "Handbook on Refugee Determination Procedures".

18. The Committee acknowledges the efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians. Serious concern remains at the extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights. The Committee remains seriously concerned about the extent of the dramatic inequality still experienced by an indigenous population that represents only 2.1 per cent of the total population of a highly developed industrialized State. The Committee recommends that the State party ensure, within the shortest time possible, that sufficient resources are allocated to eradicate these disparities.

19. The Committee recommends that the State party's reports be made widely available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

20. The Committee recommends that the State party's next periodic report, due on 30 October 2000, be an updating report and that it address the points raised in the present observations.